

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Windstream Corporation and International Brotherhood of Electrical Workers, AFL-CIO, CLC on behalf of its affiliated Local Unions 463, 1189, 1507, 1929, 2089, and 2374. Case 6–CA–35483

August 24, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER
AND BECKER

On May 23, 2008, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 352 NLRB 510.¹ Thereafter, the General Counsel filed an application for enforcement in the United States Court of Appeals for the Third Circuit, and the Respondent filed a cross-petition for review. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegate group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.²

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

² Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 352 NLRB 510, which is incorporated herein by reference.³

Dated, Washington, D.C. August 24, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Craig Becker, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ In incorporating the prior decision, we note that we no longer rely on *Windstream Corp.*, 352 NLRB 44 (2008). In its place, we now rely on *Windstream Corp.*, 355 NLRB No. 74 (2010).